

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: September 20, 2006

Division: Growth Management

Bulk Item: Yes ☐ No ☒

Department: Planning

Staff Contact Person: Aref Joulani/Jose Papa

AGENDA ITEM WORDING:

An ordinance to amend Section 9.5-4, Definitions, of the Monroe County Code, amending the definition of accessory uses or accessory structures and adjacent landowner, amending Section 9.5-256, Aggregation of Development, to create conditions for aggregation of lands, and Section 9.5-349 Shoreline Setbacks, to permit docking facilities on lands within 500 feet of the land containing the principal structure.

[1st of 1 required Public Hearing]

ITEM BACKGROUND:

This could have significant neighborhood impact by allowing docks on vacant lots 500 feet away from the owner's house.

This item was reviewed by the Development Review Committee on April 25, 2006. This item was reviewed and recommended for approval by the Planning Commission on May 24, 2006.

PREVIOUS RELEVANT BOCC ACTION:

The Board of County Commission continued this text amendment from the July and August BOCC meeting.

CONTRACT/AGREEMENT CHANGES:

N/A

STAFF RECOMMENDATION:

Approval.

TOTAL COST: N/A

BUDGETED: Yes ☐ No ☐

COST TO COUNTY: N/A

SOURCE OF FUNDS: _____

REVENUE PRODUCING: Yes N/A No ☐ **AMOUNT PER MONTH** ☐ **Year** ☐

APPROVED BY: County Atty ☒ OMB/Purchasing ☐ Risk Management ☐

DIVISION DIRECTOR APPROVAL:

Ty Symroski Sept. 6, 2006

DOCUMENTATION: Included ☒

Not Required ☐

DISPOSITION: _____

AGENDA ITEM # _____

MEMORANDUM



TO: Board of County Commissioners

THRU: Aref Joulani, Director, Planning and Environmental Resources Department

FROM: Jose Papa, AICP, Comprehensive Planning Manager

RE: **Text Amendment-Adjacency, Aggregation, and Docking Facilities**

DATE: August 28, 2006

MEETING DATE: September 20, 2006

Background

Staff received direction from the Planning Commission to draft language that would clarify the definition of **Adjacent and Contiguous lots for purposes of aggregation**. Furthermore, the Planning Commission directed staff to analyze the possibility of permitting docks on adjacent lots or parcels. Staff has received correspondence from citizens regarding the inclusion of certain items into the proposed amendment as well as the criteria for permitting docking facilities on adjacent/contiguous lots. Staff has included such public input as part of the proposed text amendment.

One of staff's main concerns about permitting dock facilities on non-adjacent lots is the possible insertion of nuisances into neighborhoods. It is likely that docking facilities approved under this section are more likely to be used by persons who do not live within the neighborhood (owners of such docking facilities are more likely to let other people use the docking facilities, since these docking facilities are not directly in the owners' backyard). Such use would bring additional traffic or intrusion into the neighborhood.

Furthermore, docking facilities, if permitted on non-adjacent Tier I lands would have environmental impacts on environmentally sensitive lands. In order to address these concerns, staff has drafted language designed to mitigate these possible impacts from the permitting of dock facilities on non-adjacent lands.

Discussion

I. Definition of Adjacent and Contiguous.

The definition of adjacent and contiguous has gone through different iterations since the original draft of the proposed ordinance. At the Planning Commission meeting, staff recommended a definition of adjacent lot that would make any lot/parcel within 500 feet of each other to be "adjacent".

During the BOCC public hearing for the PC-version of the text amendment, the Board raised the issue that the definition of adjacent and contiguous would create confusion since in the vernacular, adjacent and contiguous have synonymous meanings and connotations, and that the proposed amendment did not clarify the meaning of the terms.

To clarify the difference between “adjacent and contiguous lots”, staff proposes amending the definition of adjacent so it is clear that intervening roads (except US-1), right-of-way, easement, or a canal does not destroy the adjacency of lands.

Staff has not amended the definition of contiguous. Under the existing code, contiguity means the sharing of a common border at more than a single point of intersection and is not interrupted by utility easements. This definition for contiguous is distinguished from the definition of adjacency since roadways or canals breaks the contiguity of parcels.

II. Aggregation of Development

To clarify which lands may be aggregated for development, staff has proposed the following conditions in order for lands to qualify for aggregation:

- Must share at least 50% or more of the border of the smaller lot or at least 50 linear feet,
- are not separated by US-1 or roads with more than 2 (two) driving lanes,
- are not separated by intervening natural or manmade waterways,
- if the aggregated lands are separated by a road, the area of the road can not be used in computing density for housing, open space or floor area unless the road has been abandoned,
- must share unity of title,
- development will take place in the least environmentally sensitive area per §9.5-345(f), and
- In IS and URM subdivisions only one unit per lot is permitted.

It is important to note that under the proposed amendment lands separated by roads (other than US-1 or greater than two driving lanes) may qualify for aggregation. Once parcels are aggregated, the parcels would be treated as one unified parcel for the purposes of development.

One significant result of this amendment would be that accessory uses such as storage sheds, parking of boats, swimming pools or other typical accessory uses **may be permitted** on a lot or parcel across the street from a principal structure.

III. Permitting of docking facilities on “adjacent” lots.

Under the current code, “docking facilities may be constructed on adjacent parcels, under the same ownership and within the same zoning district, provided that a legally established principal use and/or structure exists on one (1) parcel”.

As directed by the planning commission, staff has drafted language that would permit docking facilities on lots not directly adjacent to the principal lot. It was the intent of the Planning Commission to analyze the feasibility of permitting docks on lots that were not directly next to the principal lot. In response, staff has drafted language that docking facilities may be permitted on lots/parcels with 500' of the property line of the principal structure under certain conditions.

These conditions are established to mitigate the possible impacts of permitting docks beyond the principal lot. Some of these anticipated impacts include:

- Lots will be developed with only the docking facility (no principal structure) on the subject property.
- The owners of the dock lots will now request water and electric service.
- Dock owners will likely request the construction of other accessory uses such as shower facilities, storage sheds, or dock boxes to store fishing equipment, life vests, or other boating equipment.
- The construction of docks will require clearing of properties to provide access for construction of docks and after construction for access to the docking facilities.
- Other amenities such as barbecue grills, picnic tables, etc. would be placed on the lots containing the docking facility.
- Unless expressly prohibited, the construction of docking facilities could be in a more restrictive zoning district or Tier designation. (i.e. principal structure is in Tier 3 and accessory dock lot is in Tier 1).
- If permitted on non-adjacent Tier I lands, construction of docking facilities would have environmental impacts on environmentally sensitive lands.
- Intrusion of additional traffic from "non-neighborhood" residents who will use the docking facilities. As outlined before, it is likely that docking facilities approved under this section are more likely to be used by persons who do not live within the neighborhood (owners of such docking facilities are more likely to let other people use the docking facilities, since these docking facilities are not directly in the owners' backyard).

Based on the anticipated impacts from these docking facilities, staff proposes that the conditions for a dock under this section include the following:

- Lots/parcels must be under common ownership,
- A unity of title must be recorded,
- The principal structure is a lawfully established dwelling unit,
- Water service may be provided by a single hose bib,
- No electric service will be permitted,
- Entrance to dock must be gated and locked when not in use,
- Docking facilities in Tier 1 lands under this section, would be limited only to those Tier 1 lands that are scarified, disturbed and would not require additional clearing for access, and

- To inform the neighboring properties of requests for docking facilities under this sub-section, the approval of docking facilities will require public notification of proposed approval to the surrounding property owners and could be appealed to the Planning Commission.

Other conditions that the Board may consider to mitigate the effects of these docking facilities include:

- No uses other than a docking facility will be permitted on a contiguous lot,
- No parking spaces will be provided on the lot containing the docking facility,
- Clearing of property will be limited to the minimum required to provide access to the docking facility, and
- Lots to be aggregated must be located in the same subdivision.

Recommendation.

Staff provides the following information to inform the BOCC of possible impacts from the proposed text amendment. Staff has included language that the BOCC may consider to mitigate some of the possible impacts of the text amendment.

ORDINANCE NO. ____ - 2006

AN ORDINANCE OF THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING THE DEFINITION OF ACCESSORY USES OR ACCESSORY STRUCTURES, AND ADJACENT LANDOWNER IN §9.5-4 OF THE MONROE COUNTY CODE; AMENDING §9.5-256 AGGREGATION OF DEVELOPMENT, TO CREATE CONDITIONS FOR AGGREGATION OF LANDS AND §9.5-349 SHORELINE SETBACKS, TO PERMIT DOCKING FACILITIES ON LANDS WITHIN 500 FEET OF LAND CONTAINING THE PRINCIPAL STRUCTURE UNDER CERTAIN CONDITIONS AND CREATING AN APPROVAL PROCESS FOR SUCH REQUESTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners makes the following Findings of Fact:

1. A need has been recognized to distinguish between adjacent and contiguous lands in the definitions of the Monroe County Land Development Regulations (LDRs).
2. A need has been recognized to clarify which lands qualify for aggregation of development under the LDRs.
3. The current LDRs do not provide definitions or procedures for aggregation that meet the needs of Monroe County residents.
4. At the direction of the Planning Commission, the Planning and Environmental Resources Department was directed to create an amendment to the LDRs, that would create a mechanism to allow docks on non-adjacent lots.
5. Federal and State law grants power to Monroe County to regulate and restrict the use of land and buildings in order to promote the safety and general welfare of its citizens.
6. Monroe County has adopted land use goals, policies, and objectives in a comprehensive plan to guide policy on building and land use regulations, and to promote health, safety, and general welfare.
7. The provision of this ordinance is consistent with the Monroe County Comprehensive Plan and the Principles for Guiding Development in the Florida Keys Area of Critical State Concern.

8. The Monroe County Planning Commission held a duly advertised public hearing on May 24, 2006 and made its recommendations to the board.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT:

PROPOSED TEXT CHANGES are presented in ~~striketrough~~ to indicate deletions and underline to indicate additions.

Section 1

AMEND §9.5-4 Definitions as follows:

- (A-2) *Accessory uses or accessory structures* means a use or structure that is subordinate to and serves a principal use or structure; and
- a) is subordinate in area, extent and purpose to the principal use or structure served; and
 - b) contributes to the comfort, convenience or necessity of occupants of the principal use or structure served; and
 - c) is located on the same lot or on contiguous lots under the same ownership and in the same land use district as the principal use or structure;
 - d) Accessory uses include the utilization of yards for home gardens provided that the produce of the garden is for noncommercial purpose; ~~however,~~
 - e) In no event shall an accessory use or structure be construed to authorize a use or structure not otherwise permitted in the district in which the principal use is located, and in no event shall an accessory use or structure be established prior to the principal use to which it is accessory.
 - f) Accessory uses shall not include guest units or any other potentially habitable structure. Habitable structures are considered to be dwelling units as defined below in this section.

(A-3) *Adjacent landowner* means ~~an owner of land sharing a boundary with another land. For purposes of the plan this Chapter, lands shall be considered adjacent despite an intervening road (except US-1), right-of-way, easement or canal. shall not destroy the adjacency of the two (2) parcels~~

Section 2.

AMEND § 9.5-256. Aggregation of Development., as follows:

Any development which has or is a part of a common plan or theme of development or use, including but not limited to an overall plan of development, common or shared amenities, utilities or facilities, shall be aggregated for the purpose of determining permitted or authorized development and compliance with each and every standard of this chapter and for the purpose of determining the appropriate form of development review.

Lands to be aggregated shall meet the following conditions:

- a) share at least 50% or more of the border of the smaller lot or at least 50 linear feet,
- b) are not separated by US-1 or roads with more than 2 (two) driving lanes,
- c) are not separated by intervening natural or manmade waterways,
- d) if the aggregated lands are separated by a road, the area of the road can not be used in computing density for housing, open space or floor area unless the road has been abandoned,
- e) must share unity of title,
- f) development will take place in the least environmentally sensitive area per §9.5-345(f), and
- g) In IS and URM subdivisions only one unit per lot is permitted.

Section 3

AMEND § 9.5-349. Shoreline setback as follows:

- (m) *Docking Facilities:* Docking facilities shall be permitted, provided that:
- ~~(4) Notwithstanding the provisions of section 9.5-4(A-2), docking facilities may be constructed on adjacent parcels under the same ownership and within the same zoning district, provided that a legally established principal use and/or structure exists on one (1) parcel. In the event that ownership of the adjacent parcel containing such an accessory dock is severed from the parcel containing the principal use/structure, the dock must be removed and the shoreline restored.~~
 - (4) Notwithstanding the provisions of section 9.5-4(A-2), docking facilities may be permitted on lots/parcels within 500 feet in a straight line from the property line of the principal structure under the following conditions:
 - (a) the lots/parcels are under common ownership,
 - (b) a unity of title is recorded,
 - (c) the principal structure is a lawfully established dwelling unit,
 - (d) water service may be provided by a single hose bib,
 - (e) no electric service will be permitted,
 - (f) entrance to dock must be gated and locked when not in use,
 - (g) if proposed docking facility is on Tier 1 designated land, property must be scarified or disturbed and no clearing of native habitat can be required for access,
 - (h) in the event that ownership of the lands containing the dock is severed from the land containing the principal use/structure, the dock must be removed and the shoreline restored.

Applications for a docking facility under this Section shall be consistent with the process, public notification requirement, and appeal process outlined under Section 9.5-523.

Section 4. Severability.

If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 5. Conflicting Provisions.

In the case of direct conflict between any provision of this ordinance and a portion or provision of any appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

Section 6. Effective Date.

This ordinance shall be filed in the Office of the Secretary of State of the State of Florida, but shall not become effective until a notice is issued by the Department of Community Affairs or Administrative Commission approving the ordinance pursuant to Chapter 380, Florida Statutes.

Section 7. Transmittal for Codification

The provisions of this ordinance shall be included and incorporated into the Code of Ordinances of the County of Monroe, Florida, as an addition or amendment thereto and shall be appropriately numbered to conform to the uniform numbering system of the Code.

Remainder of Page Left Blank

Adjacency, Aggregation, and Docking Facilities Text Amendment

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the _____ day of _____, 2006.

Mayor Charles "Sonny" McCoy
Mayor Pro Tem Dixie Spehar
Commissioner George Neugent
Commissioner Mario Di Gennaro
Commissioner Glenn Patton

(SEAL)

ATTEST: DANNY L. KOLHAGE,
CLERK

BOARD OF COUNTY
COMMISSIONERS OF MONROE
COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Mayor, Charles "Sonny" McCoy

